

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

ANTHONY VENNERI,

Petitioner,

v.

Civil Action No. 5:22-CV-242
Judge Bailey

M.J. BAYLESS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above referenced case is before this Court upon the magistrate judge's recommendation that petitioner's petition be denied and dismissed without prejudice. See [Doc. 16].

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United States v. Schronce***, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). Petitioner did not file objections to the report and recommendation; however, he did file a

First Motion to Amend Petitioner's Response to Respondent's Motion to Dismiss, which this Court has considered. See [Doc. 18]. However, the proposed First Amended Response to Respondent's Motion to Dismiss [Doc. 18-1] is futile because therein, petitioner admits (just as the magistrate judge found in his report) that he failed to exhaust administrative remedies prior to filing the instant petition.¹ See [id. at 6–7].

Accordingly, a review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. As such, the magistrate judge's report and recommendation [Doc. 16] is **ADOPTED**, respondent's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc. 11] is **GRANTED**, petitioner's First Motion to Amend Petitioner's Response to Respondent's Motion to Dismiss [Doc. 18] is **DENIED**, and petitioner's petition [Doc. 1] is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

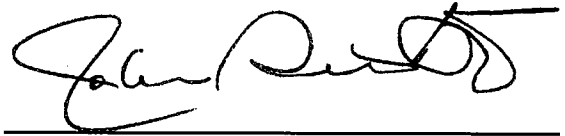
This Court further **DIRECTS** the Clerk to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

¹To the extent petitioner suggests exhaustion should be waived, this Court disagrees. See *Homan v. U.S. District Court*, 2011 WL 4007391, at *2 (N.D. W.Va. 2011) (Joel, M.J.) (citing *Alexander v. Hawk*, 159 F.3d 1321, 1327–28 (11th Cir. 1998) (finding administrative exhaustion requirement even where the administrative process is unlikely to grant inmate relief)).

DATED: March 9, 2023.

A handwritten signature in black ink, appearing to read "John Preston Bailey", written over a horizontal line.

**JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE**